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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, APRIL 16, 2002

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2002-00107

Ex Parte: In the matter of
Adopting Revisions to the Rules
Governing Settlement Agents

ORDER TO TAKE NOTICE

WHEREAS, § 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 6.1-2.25 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary to carry out the provisions of the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia);

WHEREAS, the rules and regulations issued by the Commission pursuant to § 6.1-2.25 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code;

WHEREAS, the Bureau of Insurance has submitted to the Commission proposed revisions to Chapter 395 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Settlement Agents," which amend the rules at 14 VAC 5-395-20, 14

VAC 5-395-30, 14 VAC 5-395-40, 14 VAC 5-395-50, and 14 VAC 5-395-60; and

WHEREAS, the Commission is of the opinion that the proposed revisions should be considered for adoption with a proposed effective date of June 3, 2002;

THEREFORE, IT IS ORDERED THAT:

(1) The proposed revisions to the "Rules Governing Settlement Agents," which amend the rules at 14 VAC 5-395-20, 14 VAC 5-395-30, 14 VAC 5-395-40, 14 VAC 5-395-50, and 14 VAC 5-395-60, be attached hereto and made a part hereof;

(2) All interested persons who desire to comment in support of or in opposition to, or to request a hearing to oppose the adoption of, the proposed revisions shall file such comments or hearing request on or before May 28, 2002, in writing with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218 and shall refer to Case No. INS-2002-00107;

(3) If no written request for a hearing on the proposed revisions is filed on or before May 28, 2002, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions, may adopt the revisions proposed by the Bureau of Insurance;

(4) AN ATTESTED COPY hereof, together with a copy of the proposed revisions, shall be sent by the Clerk of the Commission

to the Virginia State Bar, the Virginia Real Estate Board, the Virginia Land Title Association, the Bureau of Financial Institutions in care of Senior Counsel Jonathan B. Orne, and the Bureau of Insurance in care of Deputy Commissioner Mary M. Bannister, who forthwith shall give further notice of the proposed adoption of the revisions to the rules by mailing a copy of this Order, together with a draft of the proposed revisions, to all title insurance companies, title insurance agents, and title insurance agencies licensed in the Commonwealth of Virginia; and by forwarding a copy of this Order, together with a draft of the proposed revisions, to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations; and

(5) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (4) above.

State Corporation Commission
Bureau of Insurance

CHAPTER 395.
RULES GOVERNING SETTLEMENT AGENTS.

14 VAC 5-395-20. Definitions.

As used in this chapter:

"Act" means the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia). Unless otherwise defined herein, all terms used in this chapter shall have the meaning as set forth in the Act.

"Agent" or "insurance agent," ~~when used without qualification,~~
~~means an individual, partnership, limited liability company, or~~
~~corporation that solicits, negotiates, procures or effects~~
~~contracts of insurance or annuity in this Commonwealth~~ shall
have the same meaning as set forth in § 38.2-1800 of the Code of
Virginia.

"Bureau" means the State Corporation Commission Bureau of Insurance.

"Lay real estate settlement agent" means a person who (i) is not licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1 of the Code of Virginia, (ii) is not a party to the real estate transaction, (iii) provides escrow, closing or settlement services in connection with a transaction related to any real estate in this Commonwealth, and (iv) is listed as the settlement agent on the settlement statement for such transaction.

"Settlement agent" shall have the same meaning as set forth in § 6.1-2.20 of the Code of Virginia.

"Title insurance agency" means a ~~partnership, limited liability company, or corporation~~ business entity licensed in this Commonwealth as a title insurance agent.

~~"Title insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect title insurance on behalf of title insurance companies licensed under Chapter 46 (§ 38.2-4600 et seq.) of Title 38.2 of the Code of Virginia~~ shall have the same meaning as set forth in § 38.2-1800 of the Code of Virginia.

"Title insurance company" means any company licensed to transact, or transacting, title insurance in this Commonwealth.

14 VAC 5-395-30. Registration.

Every title insurance agent, title insurance agency and title insurance company that ~~(i) provides escrow, closing or settlement services involving the purchase of or lending on the security of real estate containing not more than four residential dwelling units in the Commonwealth of Virginia and (ii) is listed as the settlement agent on the settlement statement for such transaction~~ acts as a settlement agent shall be required to be registered ~~as a settlement agent~~ with the Virginia State Bar in accordance with the provisions of § 6.1-2.26 of the Code of Virginia.

14 VAC 5-395-40. Insurance and bonding requirements.

A. At the time of registration with the Virginia State Bar, every title insurance agent and title insurance agency acting as a settlement agent shall file with the bureau a certification on a form prescribed by the bureau, that the settlement agent has, and thereafter shall keep in force for as long as they are acting as a settlement agent, the following:

1.

~~A. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia shall file with the bureau at the time of registration with the Virginia State Bar and on or before July 1, every year thereafter, a copy of its~~ An errors and omissions insurance policy, ~~or evidence of such insurance policy,~~ providing limits of at least \$250,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia.

2.

~~B. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia shall file with the bureau at the time of registration with the Virginia State Bar and on or before July 1, every year thereafter, a copy of its~~ A blanket fidelity bond or employee dishonesty insurance policy, ~~or evidence of such bond or insurance policy,~~ providing limits of at least \$100,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia. Settlement agents that have no employees except the owners, partners, shareholders, or members may ~~file annually with the bureau a waiver of the fidelity bond or employee dishonesty insurance~~

~~policy. Such waiver shall be on a form prescribed by the bureau~~
request a waiver of this requirement on their certification
form.

€ B. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia or is registered with the Virginia State Bar shall file with the bureau a surety bond in an amount not less than \$100,000 on a form prescribed by the bureau. The original surety bond shall be filed with the bureau at the time of registration with the Virginia State Bar and, if such bond is canceled, at the time a replacement bond is issued.

14 VAC 5-395-50. Audits.

A. Every title insurance agent, and title insurance agency, ~~and title insurance company~~ that acts as a settlement agent in the Commonwealth of Virginia shall, at its expense, have an audit of its escrow accounts conducted by an independent certified public accountant at least once each consecutive 12-month period. Such audit shall conform with the standards established by the American Institute of Certified Public Accountants, Statement on Auditing Standards, Special Reports, and shall be filed by the settlement agent with the bureau no later than 60 days after the

date on which the audit is completed. A title insurance company shall be subject to the requirements of this subsection unless such companies financial statements are audited annually by an independent certified public accountant.

B. Every title insurance agent or title insurance agency acting as a settlement agent shall file a copy of its audit report with each title insurance company it represents.

C. In lieu of an audit conducted by a certified public accountant, a title insurance agent or title insurance agency acting as a settlement agent shall allow each title insurance company for which it has an appointment to conduct an analysis of its escrow accounts at least once each consecutive 12-month period. The form of such analysis shall be prescribed by the bureau. The title insurance company shall submit a copy of its analysis to the bureau no later than 60 days after the date on which the analysis is completed. With the consent of the title insurance agent or agency, a title insurance company may share the results of its analysis with other title insurance companies that will accept the same in lieu of conducting a separate analysis.

14 VAC 5-395-60. Separate fiduciary trust account.

Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent in the Commonwealth of Virginia shall maintain a separate fiduciary trust account for the purpose of handling funds received in connection with escrow, closing, or settlement services involving real estate located only in this Commonwealth. No other funds may be included in this escrow account except funds deposited to guarantee the adequacy of the account. Such trust account shall be with a financial institution authorized to do business in the Commonwealth of Virginia. If the agent, agency, or company acting as a lay real estate settlement agent provides escrow, closing, or settlement services in transactions involving multiple parcels or tracts of real estate and any one of those tracts or parcels is located wholly or partially outside of this Commonwealth, that agent, agency, or company shall maintain another separate fiduciary trust account for the purpose of handling funds received in connection with such transactions.